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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

|   |   |
|---|---|
| In re: County of Monterey Initiative Matter | ) NO: C 06-01407 JW                           |
|   | ) NO: C 06-02202 JW                           |
| and   | )   |
| In re: Monterey Referendum                  | ) <b>RESPONSE TO <i>RANGEL</i> PLAINTIFFS</b> |
|   | ) <b>MOTION FOR INJUNCTION PENDING</b>        |
|   | ) <b>APPEAL</b>                               |
|   | )   |
|   | )   |
|   | ) Date: To Be Determined                      |
|   | ) Time:                                       |
|   | ) Place: Courtroom 8                          |
|   | ) Judge: Honorable James Ware                 |
|   | )   |
|   | )   |
|   | )   |
|   | )   |

1 In case Nos. C 06-01407 JW and C 06-02202 JW, defendants County of Monterey, the Board Of  
 2 Supervisors of the County of Monterey, and Anthony Anchundo (County Defendants) hereby respond to  
 3 the *Rangel* plaintiffs' motion for an injunction pending appeal.

4 **I. FACTUAL BACKGROUND**

5 As the Court knows, the County Defendants have been of the view that, with respect to the  
 6 referendum matters, the *Rangel* plaintiffs were correct and the *Rancho San Juan* plaintiffs were not  
 7 correct. That is, County Defendants have taken the position throughout this litigation that referendum  
 8 petitions are subject to the translation requirements of the Federal Voting Rights Act (FVRA).

9 However, in its Order and Summary Judgment dated March 29, 2007, this Court held that  
 10 referendum petitions are not subject to the FVRA's translation provisions. While the Court's  
 11 determination was contrary to the County Defendants' view, they have nevertheless accepted it and the  
 12 subject referendum measure, now known as Measure D, has been placed on the June 5, 2007 ballot.<sup>1</sup>  
 13 Declaration of Susan Orman, ¶ 3.

14 Nevertheless, the County Defendants are again caught in the middle of a struggle over the June  
 15 5, 2007 election because the *Rangel* plaintiffs are appealing this Court's March 29, 2007 decision.  
 16 Although they neither oppose nor support the *Rangel* plaintiffs' motion, the County Defendants do need  
 17 to address the practical issues to the Court relating to the requested relief.

18 **II. LEGAL ARGUMENT: IF IT GRANTS THE MOTION, THE ONLY REQUESTED**  
 19 **RELIEF THIS COURT CAN PROVIDE IS THE THIRD OPTION, NOT COUNTING**  
 20 **THE VOTES ON MEASURE D**

21 The *Rangel* plaintiffs ask for three types of relief alternatively. However, because of the status  
 22 of matters, only the third type of relief would be possible at this point. The County Defendants'  
 23 reasoning is set forth below.

24 The first type of relief that the *Rangel* plaintiffs request is that Measure D not be printed on the  
 25 ballot and that it not be sent to the voters. This request is untimely. To explain, all election materials for  
 26 printing were transmitted by the County to the printers on April 9, 2007, and the printers were given the  
 27

28 <sup>1</sup> The County Defendants have not determined whether to appeal the Court's ruling.

1 approval to prepare the proof copies of the ballot and to prepare for printing all of the ballots and the  
 2 accompanying election materials on April 13, 2007. Orman Dec., ¶ 3. The ballot proposition at issue  
 3 here is Measure D, but there are also three other measures on the June 5, 2007 ballot. *Id.* Were this a  
 4 single issue ballot, presumably any type of relief would still be available, albeit at some cost to the  
 5 County. However, there are four separate ballot measures on the June 2007 ballot, including: Measure  
 6 D (this Measure); the County's own measure concerning its 2006 General Plan (Measure B); a citizens'  
 7 referendum on the same matter (Measure C); and the initiative measure which has been the subject of  
 8 the *Madrigal* and *Melendez* cases and which was placed on the ballot after the Ninth Circuit's reversal  
 9 of itself in *Padilla* (Measure A). At this point no one is contesting the appropriateness of the first three  
 10 measures being on the ballot.<sup>2</sup> As a result, the question is whether the County can remove Measure D  
 11 from the ballot as requested by the *Rangel* plaintiffs, and still go ahead with the election on the other  
 12 three measures which will appear on the same printed ballot.

13 Here, the County cannot remove Measure D from the ballot and still allow voters to vote on  
 14 Measures A, B and C. Orman Dec., ¶¶ 3,4. The ballots and other related materials were sent to the  
 15 printers on April 9, 2007, and must be finalized by April 13, 2007 in order to allow the County sufficient  
 16 time to send the ballots to the voters. Therefore, the request for the first alternative by the *Rangel*  
 17 plaintiffs, that Measure D not go to the voters, is not possible from a practical stand point unless the  
 18 Court were to stop the entire election.

19 The second type of relief requested by the *Rangel* plaintiffs – that even if Measure D remains on  
 20 the ballot, the voters should be instructed not to vote on it – is equally inappropriate from a practical  
 21 standpoint. If the Court were to grant this relief, it would create a number of questions, including (a)  
 22 how does the County ensure that the ballot, which asks voters to vote on Measure D, also be  
 23 accompanied by the material that says not to vote on Measure D; and (b) how does the County ensure  
 24 \_\_\_\_\_

25 <sup>2</sup> A group, including some of the same parties to these cases, challenged the placement Measure B,  
 26 described above, the County's referendum of its own 2006 General Plan. However, that challenge was  
 27 denied by the Superior Court, and now recently by the Court of Appeal on April 9, 2007. (Declaration of  
 28 Stephen N. Roberts, Ex. A.) Unless the opponents of such a measure interest the California Supreme  
 Court in the case, it will be on the June 5, 2007 ballot.

1 that all voters receive this instruction? To accomplish that, the instructions would have had to be printed  
 2 on the ballot itself or with the ballot materials described in Ms. Orman's Declaration, and those  
 3 materials, including the "no vote on Measure D" instruction, would have to be sent to the voters with the  
 4 ballot and the ballot materials. See, e.g., Orman Dec., ¶ 3. Otherwise, as a practical matter, it is unclear  
 5 the County would be able to deliver notice to the same persons who are receiving the ballots and voting  
 6 on them. But it is too late to change what is already being printed. *Id.* at ¶¶ 3-6. Moreover, the concept  
 7 of sending a ballot along with instructions telling voters not to vote would be confusing to voters.

8 The third type of relief requested by the *Rangel* plaintiffs' – to vote on a measure which is on the  
 9 ballot, but that the votes not be counted unless the decision on appeal is not in their favor – is the only  
 10 viable form of relief. If this Court issues an opinion by April 27, 2007, there will be a sufficient period  
 11 of time before the June 5, 2007 election for the County to program its computers to count the ballots  
 12 without counting the votes for Measure D. Orman Dec., ¶ 7.

### 13 III. CONCLUSION

14 Although the County Defendants take no position one way or another on the substance of the  
 15 *Rangel* plaintiffs' motion, the relief requested by the *Rangel* plaintiffs causes many practical difficulties.  
 16 Accordingly, the County Defendants request that, if the Court considers any injunctive relief, the relief  
 17 granted should be limited to the third option: to count the votes on Measure D after the decision on  
 18 appeal of this case issues.

19  
 20 Dated: April 11, 2007

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

21 By:   
 22 STEPHEN N. ROBERTS

23 Attorneys for Defendants  
 24 COUNTY OF MONTEREY, THE BOARD OF  
 25 SUPERVISORS OF THE COUNTY OF MONTEREY, AND  
 26 ANTHONY ANCHUNDO  
 27  
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